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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/616,425 | 07/09/2003 | Larry T. Bashark | US20030001 | 1249 |
| 173 | 7590 | 08/26/2004 | EXAMINER | |
| WHIRLPOOL PATENTS COMPANY - MD 0750 | | | CARRILLO, BIBI SHARIDAN | |
| 500 RENAISSANCE DRIVE - SUITE 102 | | | ART UNIT | |
| ST. JOSEPH, MI 49085 | | | PAPER NUMBER | |

1746

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,425

Applicant(s)

BASHARK, LARRY T.

Examiner

Sharidan Carrillo

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07092003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 28-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-38 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07092003.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-27, drawn to a method of adjusting the amount of liquid, classified in class 134, subclass 18.
 - II. Claims 28-37, drawn to a dishwasher, classified in class 134, subclass 58D.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the process as claimed can be practiced by another and materially different apparatus such as a dishwasher which does not require a sensor.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Robert Judd on 8/16/04 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 28-37 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite because it is unclear what one of ordinary skill in the art would consider as "adaptively adjusting."

Claim 2 is indefinite because it is unclear what is meant by "said adjusted liquid fill period amount of liquid", "adaptive fill memory", and "said stored adjusted liquid fill period amount of liquid". Additionally these terms in addition to "the controller" lacks positive antecedent basis.

Claim 3 is indefinite because "the duration of the liquid fill period" lacks positive antecedent basis. Claim 5 is indefinite because it is unclear the relationship between the interruption of the power supply for the dishwasher and the method steps recited in claim 1. Additionally, it is unclear whether it is the first liquid fill period "prior" to activation of said drain pump or whether applicant intends operating the circulation pump "prior" to activation of the drain pump.

Claim 6 is indefinite because it is unclear what is meant by "adjusted liquid fill period amount of liquid", "non-volatile adaptive fill memory", and "stored adjusted fill time period amount of liquid". Additionally, these terms in addition to "said controller" lacks positive antecedent basis.

Claims 7 and 26 are indefinite because it is not further limiting since "adaptively adjusted" is previously recited in claim 1. Additionally, it is unclear what is meant by "adaptively adjusted".

Claims 14 and 15 are indefinite because it is unclear what the differences are between pump motor phase lag increase and pump motor main winding phase lag increase. Claims 16-18 are indefinite because it is unclear what is meant by stored adjusted liquid fill period amount of liquid. Claim 17 is indefinite because it is unclear what one would consider as more than a few days. Claim 19 is indefinite because it is unclear what one would consider as the minimum and maximum limits for the amount of liquid added in a liquid fill period. Claims 20-21 and 23 are indefinite because "the controller" lacks positive antecedent basis. Claim 22 is indefinite because it is unclear what one of ordinary skill in the art would consider as "normal operational conditions".

Claim 24 is indefinite because it is unclear what is meant by "adaptive liquid fill period amount of liquid stored" or "said adjusted adaptive liquid fill period amount of liquid" or "previous adaptive liquid fill period amount of liquid". Claim 25 is indefinite because it is unclear what is meant by "winding phase lag" or "total phase lag".

7. In an interview with Mr. Robert Judd, on 8/17/04, the examiner discussed amending the claims to correct the 112, second paragraph issues. However, due to the extensive nature of the 112 issues, an office action was requested.

8. Claims 1-27 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

9. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach or suggest adjusting the amount of liquid added during the next liquid fill period of a dishwasher cycle by activating the drain pump to drain liquid from the dishwasher while continuing to operate the circulation pump until the circulation pump experiences a liquid starvation episode and using the difference between the starvation period and a predetermined optimum time period in order to determine the amount of liquid added in the next liquid fill period.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lagerstrand teaches a liquid level control arrangement for a dishwasher. Crawford teaches a dishwasher fill level control arrangement. Badami teaches a method for reducing the water consumption in a machine for washing articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharidan Carrillo whose telephone number is 571-272-1297. The examiner can normally be reached on Monday-Friday, 6:00a.m-2:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sharidan Carrillo
Primary Examiner
Art Unit 1746

bsc



SHARIDAN CARRILLO
PRIMARY EXAMINER